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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,651	08/07/2001	Kevin P. Headings	108.0010-00000	9189
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MARTIN & FERRARO, LLP 1557 LAKE O'PINES STREET, NE HARTVILLE, OH 44632			EXAMINER HEWITT II, CALVIN L	
			ART UNIT 3621	PAPER NUMBER
			MAIL DATE 06/25/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

09/922,651

Applicant(s)

HEADINGS ET AL.

Examiner

Calvin L. Hewitt II

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-22 and 41-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 and 41-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Status of Claims***

1. Claims 1-22 and 41-49.

***Response to Amendments/Arguments***

2. Applicant is of the opinion that the prior art of Downs et al. does not teach providing for the aggregation of selected media content offerings (i.e. combining media assets based on a business rule) into at least one rollout, each media content offering is being offered to at least one of the selected groupings of the consumers, and a rollout specific to the selected groupings. Note, because the content is offered to users necessarily implies that a group of consumers can receive the content and that the content is accessible to said consumers. The Examiner respectfully disagrees with Applicant's assessment.

Downs et al. teach placing multiple items for purchase (column 29, lines 30-35) in a single container (column/line 28/15-30/62), hence Downs et al. teach aggregating content. Claims 1 and 49 as amended are rejected under 112 second paragraph. Claims 1 and 49 recite "each media content offering is being offered to at least one of the selected groupings of the consumers". However, in these claims there is not previous mention of a "selected groupings of consumers" only "at least one selected group". For purposes of examination, the

limitation is being interpreted as “each media content offering is being *offered to said selected group of consumers*”. Therefore, as Downs et al. teach making content available on a content store (column/line 70/40-72/63) such as Columbia House Online (column 70, lines 43-59), the prior art teaches making content available to a selected group of consumers (i.e. all). Downs et al. also teach making content available for distribution based location, bit rate, service provider or contract (column/line 69/27-70/40; column 70, lines 43-59).

Regarding making content specific to a selected grouping claims 1 and 41 are silent such a recitation (*In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993)).

Also, language preceded by the term “adapted for” does not distinguish the claims from the prior art (MPEP §2106 II C).

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-22 and 41-49 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 41 recite the limitation "the selected groupings of the consumers" in lines 12 and 13, respectively. There is insufficient antecedent basis for this limitation in the claim.

Claims 2-21 and 42-49 are also rejected as each depends from either claim 1 or 41.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-22, 41-49 and 60-87 are rejected under 35 U.S.C. 103(a) as being unpatentable over Downs et al. U.S. Patent 6,226,618 in view of Swix et al., U.S. Patent 6,718,551.

As per claims 1-22, 41-49 and 60-87 Downs et al. teach a system for providing content to users comprising:

- a (local) content database or repository storing the media content offering delivered from said content management system, a rack that receives the media content offering from said content management system, said rack

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including a file repository for storing media content associated with the media content offering and a server distributing media content stored in said file repository (figures 1D, 5, 6, 10 and 14; column/line 68/47-70/39)

- a processor that combines media assets and metadata (figure 1)  
combining media assets and metadata based on selected groupings of the consumers to create a media content offering for each selected grouping of the consumers, said content management system selecting the media content offering for distribution to the selected groupings of the consumers based on at least one of a geographical location, a bit rate service, a service provider, and a contractual term (e.g. specifying a provider) and to aggregate the selected media content offering into a rollout available for exhibition to the consumers (column 26, lines 5-30; column 39, lines 10-20; column 48, lines 45-50; column 54, lines 30-35; column 59, lines 15-30; column 69, lines 1-27)
- a subscriber management system for creating a plurality of subscriber accounts, said subscriber management system including at least one processor and at least one medium for storing subscriber account information, said processor being operable to maintain the subscriber accounts and includes a procedure for billing the subscriber accounts, said subscriber management system being operable to group individual consumers into the selected groupings for receiving selected media

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content -offering specific for at least one of the selected groupings

(column 23, lines 15-20; column/line 45/65-47/25)

- subscriber management system processor that manages consumer-related information, further comprising a database for storing the consumer related information (e.g. billing, demographics (column 23, lines 15-20; column/line 45/65-47/25)
- collecting information associated with the use of media content selected from the media content offering by each consumer (e.g. content use information includes consumer media content preferences) (column 23, lines 15-20; column/line 45/65-47/25)
- server for licensing content and license terms or rules (e.g. content offer expires after a length of time, price) (column 25, lines 20-35; column 26, lines 5-35; column 59, lines 33-67)
- license includes a decryption key program adapted to decrypt media content that is encrypted (column/line 81/62-82/5; column 83, lines 2-15)
- subscriber management processor checking an accounts database and determine whether the consumer is permitted to use the selected media content (column 23, lines 15-20; column/line 45/65-47/25)

Swix et al. teach collecting user demographics and viewing habits (e.g. length of time) then using the collection to provide content to users

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(column/line 1/43-2/2; column 2, lines 30-48; column 3, lines 48-64). Downs et al. disclose a store for distributing content to end-users (column/line 9/60-10/35). Swix et al. teach an ad manager collecting user demographics and viewing habits then using the collection to provide content to users (column/line 1/43-2/2; column 2, lines 30-48; column 3, lines 48-64). To one of ordinary skill, it is well known to those of ordinary skill in retail to determine what products to offer based on sales and customer demographics. Therefore, it would have been obvious to one of ordinary skill for the store of Downs et al. to use stored transaction data (what was purchased, identity of purchaser) ('618, column/line 45/65-47/5) to choose (i.e. refresh or update it's database of offerings) what content (e.g. Mariah Carey, Morrissey, etc.) it makes available to consumers. And, to one of ordinary skill "selected groupings of consumers" are those consumers that have been targeted using the method disclosed by Swix et al. for ads promoting certain artists (e.g. Mariah Carey).

### ***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Calvin Loyd Hewitt II whose telephone

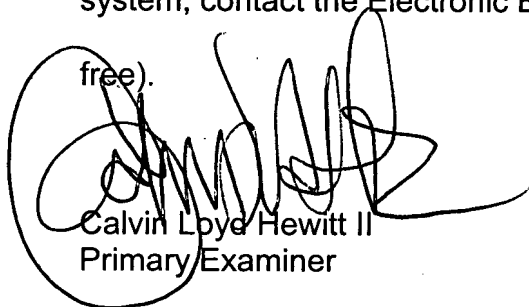
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number is (571) 272-6709. The Examiner can normally be reached on Monday-Friday from 8:30 AM-5:00 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Andrew Fischer, can be reached at (571) 272-6779.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-

free).



Calvin Loyd Hewitt II  
Primary Examiner

June 14, 2007